



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 00514-99
8 November 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LCDR [REDACTED], USN, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 23 Dec 98 w/attachments
(2) PERS-311 memo dtd 10 May 99 w/enclosure
(3) Subject's memo dtd 13 Sep 99 w/enclosures and CO's end
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by modifying the original fitness report for 7 March to 7 June 1998 to reflect the changes delineated in the commanding officer's (reporting senior's) letter-supplement dated 6 November 1998, and by removing the letter-supplement. Copies of the original report and letter-supplement are at Tabs A and B, respectively

2. The Board, consisting of Messrs. Goldsmith and Silberman and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 28 October 1999. Pursuant to the Board's regulations, the majority, Mr. Silberman and Ms. Gilbert, determined that partial corrective action indicated below should be taken on the available evidence of record. The minority, Mr. Goldsmith, recommended that Petitioner's request be denied. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that the reporting senior's letter-supplement modified the fitness report in question by removing all adverse matter contained in the original report; that the original report, signed by the reporting senior on 7 June 1998, was revised by the reporting

senior's letter-supplement dated 6 November 1998; that amplifying information was received after the signing and submission of the original report; and that the original report should be amended to reflect the corrections stated in the letter-supplement, because "This action will allow for a cleaner record, thus avoiding any chance of human error during future selection and/or promotion boards with the board's recorder failing to annotate the changes or note the discrepancies" in the original report.

d. The letter-supplement changes block 20 ("Physical Readiness") from "P/NS" (passed Physical Readiness Test (PRT)/not within height/weight or body fat standards) to "P/WS" (passed PRT/within height/weight or body fat standards); block 35 ("Military Bearing/Character") from "2.0" (second lowest) to "4.0" (second highest); block 42 ("Promotion Recommendation - Individual") from "Promotable" (third best) to "Early Promote" (best); and block 43 ("Promotion Recommendation - Summary") from "1" in "Promotable" and "0" in all other categories to "1" in "Early Promote" and "0" in all other categories (Petitioner was not compared with any other officer). Block 41 ("Comments on Performance") was modified by deleting the following adverse discussion of block 35:

*35 (Military Bearing) Capped at 2.0 with promotable recommendation as directed by NAVOP [Naval Operations] 043/95 (interim change to Navy Performance and Counseling System). [Petitioner] has shown significant improvement. This is not considered a long-term problem. Failed most recent PRT due to weight standards (23%). Progress toward compliance noted.

The same justification, which follows, was given for each of the changes:

Information received after the report was written justifies a higher grade. Officer reported on now within standards.

e. NAVOP 043/95, paragraph 2.H provides the following:

Physical Readiness. Members who were not within standards during the most recent PRT cycle but who are making satisfactory progress in a remedial program shall be assigned a maximum of 2.0 Military Bearing/Character, and still may receive an overall assessment of Promotable.

Bureau of Naval Personnel Instruction (BUPERSINST) 1610.10, enclosure (2), paragraph A-4 requires that the fitness report block 20 code "NS" be explained in the comments and treated as adverse matter. Naval Operations Instruction (OPNAVINST) 6110.1E dated 23 March 1998, enclosure (2), paragraph 5.a establishes 22 per cent as the maximum body fat for men at the time the contested original fitness report was submitted. Copies of the pertinent portions of NAVOP 043/95, BUPERSINST 1610.10 and OPNAVINST 6110.1E are attached to enclosure (1) for reference.

f. In the advisory opinion attached as enclosure (2), PERS-311, the Navy Personnel Command office having cognizance over fitness report matters, recommended that Petitioner's record remain unchanged. They stated that in accordance with BUPERSINST 1610.10, supplemental material, when accepted, is stored in the image file, but the original report remains unchanged in the file unless altered or removed as a result of a member's appeal; that amendments or additions to the evaluative blocks are regarded as supplements to the original report, rather than a change; and that they are not entered in the automated file and Performance Summary Report (PSR), but a notation will appear on the PSR to indicate that supplementary material has been placed in the image file. PERS-311 stated that Petitioner's reporting senior submitted the performance evaluation letter-supplement in accordance with BUPERSINST 1610.10, and that it is filed next to the original report in Petitioner's digitized record. They noted the letter-supplement reflects that information received after the report was written, that Petitioner is now within standards, justifies a higher grade. They concluded that the statement Petitioner is now within standards does not change the fact he was not within standards when the report was written; that the fact a fitness report may adversely affect promotion opportunity is not sufficient reason to change or remove it; and that Petitioner does not prove the report at issue to be unjust or in error.

g. Enclosure (3) is Petitioner's response to the advisory opinion, in which he repeats his contention that the original fitness report was changed by the commanding officer and should be altered through his application to this Board. He enclosed a letter from his current commanding officer (not the reporting senior), strongly supporting his petition. The current commanding officer stated Petitioner "is an outstanding officer, one of the best, with whom I have ever served." He asserted that the commanding officer who submitted the contested report made mistakes regarding the handling of the report, specifically, that no recorded counseling was conducted, and no letter was prepared referring the adverse report to Petitioner for a statement as required by BUPERSINST 1610.10 (the report shows Petitioner indicated he understood his right to make a statement and did not intend to submit one). He noted that the letter-supplement was submitted to correct the original report, and stated he strongly believes replacing both with a corrected report, as Petitioner requests, "is the right thing to do."

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the unfavorable PERS-311 advisory opinion at enclosure (2), the majority finds an injustice warranting partial relief, specifically, raising the block 35 mark of "2.0" to "4.0," raising the block 42 promotion recommendation from "Promotable" to "Early Promote," and removing from the block 41 narrative the language explaining the "2.0." They further find that the letter-supplement should be amended accordingly, by deleting the portions that reveal the material to be removed. In this connection, they particularly note that the submission of the letter-supplement was very prompt, just under five months after the date of the original report. They find the reporting senior effectively says he made a mistake in marking Petitioner, although he cites information from outside the period. Noting that Petitioner was

only one percentage point shy of compliance with the body fat standards, they find NAVOP 043/95 was unduly restrictive of the reporting senior's discretion in marking him. They feel it is in the interest of justice to waive it in this case.

The majority finds no basis for disturbing either the "NS" code in block 20 or the block 41 comment "Failed most recent PRT due to weight standards (23%). Progress toward compliance noted." Consequently, they find that the portion of the letter-supplement concerning block 20 should stand. In this regard, they find that the "NS" code was accurate, in that Petitioner was not in compliance with body fat standards during the reporting period in question; and that this adverse entry required justification in the comments portion of the report.

In view of the foregoing, the majority recommends the following limited corrective action:

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying his fitness report for 7 March to 7 June 1998, signed by Commander G. J. Karol, III, USN and dated 7 June 1998, as follows:

(1) Block 35 ("Military Bearing/Character"): Change from "2.0" to "4.0."

(2) Block 41 ("Comments on Performance"): Remove the following:

*35 (Military Bearing) Capped at 2.0 with promotable recommendation as directed by NAVOP 043/95 (interim change to Navy Performance and Counseling System). [Petitioner] has shown significant improvement. This is not considered a long-term problem.

(3) Block 42 ("Promotion Recommendation - Individual"): Change from "Promotable" to "Early Promote."

(4) Block 43 ("Promotion Recommendation - Summary"): Change "1" in "Promotable" to "0" and change "0" in "Early Promote" to "1."

b. That Petitioner's naval record be corrected further by amending the Commanding Officer, USS KAUFFMAN (FFG 59) letter 1610 dated 6 November 1998, Subj: Evaluation Report Letter-Supplement by removing the following from paragraph 2:

b. Block 35: Change the grade from 2.0 to 4.0. Information received after the report was written justifies a higher grade. Officer reported on now within standards.

c. Block 41: Delete adverse discussion of BLK [block] 35. Information received after the report was written justifies a higher grade. Officer reported on now within standards.

d. Block 42: Change the "X" from the "Promotable" category to the "Early Promote" category. Information received after the report was written justifies a higher grade. Officer reported on now within standards.

e. Block 43: Change the "1" in the "Promotable" category to a "0", and change the "0" in the "Early Promote" category to a "1". Information received after the report was written justifies a higher grade. Officer reported on now within standards.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. That the remainder of Petitioner's application be denied.

MINORITY CONCLUSION:

The minority of the Board, having considered all the evidence of record, agrees with the PERS-311 advisory opinion at enclosure (2) in concluding that the contested fitness report and letter-supplement should remain in Petitioner's record unchanged. He particularly notes that the changes proposed by the reporting senior are based on information from outside the period concerned. He finds no compelling reason to waive NAVOP 043/95. In view of the above, the minority's recommendation is as follows:

MINORITY RECOMMENDATION:

a. That Petitioner's application be denied.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

MAJORITY REPORT

Reviewed and approved: _____

MINORITY REPORT

DEC 17 1999

Reviewed and approved: *C. L. Tompkins* _____

CHARLES L. TOMPKINS
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PERSONNEL PROGRAMS)



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
10 May 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LCDR [REDACTED] USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests to change his fitness report for the period 7 March 1998 to 7 June 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. The member signed the report acknowledging the contents of the report and his right to submit a statement. The member indicated he did not desire to submit a statement.

b. In accordance with reference (a), Annex P, Paragraph P-8, administrative and supplemental material change request, when accepted, are stored in the image file, but the original report remains unchanged in the file unless altered or removed as a result of a member's appeal. Amendments or additions to the evaluative blocks are regarded as supplements to the original report rather than change. They are not entered in the automated file and PSR, but a notation will appear on the PSR to indicate that supplementary material has been placed in the image file.

c. The reporting senior submitted a supplemental letter request changing block-20 from P/NS to P/WS, block-35 from 2.0 to 4.0, block-41 to delete last paragraph, and block-42 changing the member's promotion recommendation from Promotable to Early Promote. The member is in a summary group by himself.

d. The reporting senior submitted the performance evaluation letter supplement in accordance with reference (a), Annex P. The reporting senior's cover letter states the supplemental letter reflects information received after the report was written justifies a higher grade (officer reported on now within standards). The supplemental letter was dated 6 November 1998 and the report was dated 7 June 1998. The supplemental letter states the "member now within standards" does not change the fact that he was not within standards when the report was written. The letter supplement is filed next to the report in question in the member's digitized record.

e. The fact that the report may adversely affect a member's promotion opportunity is not sufficient reason to change or remove the fitness report from the member's record.

f. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

A blacked-out redacted signature.

Head, Performance
Evaluation Branch


1998 Jun 08

514-99

MEMO

NAVPERS 1616/23

(Rev 5/97)

FITNESS REPORT/ENLISTED EVAL MEMORANDUM ENTRY	FEB 22 1999 C W Examiner's Date Stamp & Initial	X 0-3 E-35
Name: [REDACTED]	Grade/Rate: LT 03	SS: [REDACTED]
PERIOD OF REPORT FROM 98 03 07 TO 98 06 07		
This memorandum applies to the section checked below:		
<div data-bbox="212 842 1252 957"> <input checked="" type="checkbox"/> Change dates of report to read: FROM 98 02 01 TO 98 06 07 </div> <div data-bbox="212 968 1325 1031"> <input checked="" type="checkbox"/> Change block 14 to read: 98 02 01 </div> <div data-bbox="212 1062 1325 1104"> <input type="checkbox"/> Add a block _____ to read: _____ </div> <div data-bbox="212 1125 1370 1251"> <input type="checkbox"/> This memo entry corrects continuity gap. In view of the member's status (leave, transit, inactive duty, under instruction, etc.,) during the period noted above no report for this period was prepared. </div> <div data-bbox="212 1272 1325 1335"> <input type="checkbox"/> This memo entry corrects continuity gap. No report for the period can be obtained. </div> <div data-bbox="212 1356 1341 1440"> <input type="checkbox"/> Report was received without the signature of () member, () reporting senior. It was returned for signature, but no response was received. </div> <div data-bbox="212 1461 399 1524"> <input type="checkbox"/> Other. </div> <div data-bbox="683 1440 1089 1724" style="text-align: center;">  LCDR, USN HEAD EVALUATIONS BRANCH </div>		